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Attorneys for Defendant  
DISH WIRELESS L.L.C., d/b/a BOOST  
MOBILE

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

PHILIP MICHNO, an individual,

Plaintiffs,

v.

DISH WIRELESS L.L.C., d/b/a BOOST  
MOBILE, COINBASE, INC., and DOES 1 to  
10, inclusive,

Defendants.

Case No. 3:22-cv-00396

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: May 26, 2022  
Time: 10:00 a.m.  
Dept: 11  
Judge: Hon. James Donato

1 Plaintiff PHILIP MICHNO and Defendant DISH WIRELESS L.L.C., d/b/a BOOST  
 2 MOBILE (“Boost”), submit the following joint case management conference statement  
 3 pursuant to this Court’s Standing Order, the Standing Order for All Judges of the Northern  
 4 District of California – Contents of Joint Case Management Statement, and Civil Local Rule  
 5 16-9.

6 Defendant COINBASE, INC. has been dismissed from this action and is not included in  
 7 this statement.

## 8 **1. JURISDICTION AND SERVICE**

9 This Court has subject matter jurisdiction pursuant to both diversity jurisdiction and  
 10 federal question jurisdiction.

11 There are no issues regarding personal jurisdiction.

12 Boost reserves its right to file a *forum non conveniens* motion, if appropriate.

13 The individual(s) named as DOES who hacked plaintiff’s identity via SIM swapping  
 14 have yet to be identified. If identified, which seems unlikely, Plaintiff would name them as a  
 15 defendant to this action.

## 16 **2. FACTS**

### 17 Plaintiff’s Summary

18 On or around May 25, 2021, Plaintiff instantly lost 3.17 Bitcoin, worth approximately  
 19 \$180,000 at the time of filing suit, that he owned and stored on a cryptocurrency exchange  
 20 platform called Coinbase. In an incident of a rapidly emerging and foreseeable form of identity  
 21 theft known as “SIM swapping” or “SIM hijacking,” a rogue fraudster swapped Plaintiff’s  
 22 cellular phone number from BOOST to a different telecommunications carrier, T-Mobile, then  
 23 gained access to Plaintiff’s Coinbase account through the 2 factor-authentication process and  
 24 withdrew 3.17 Bitcoin, all within a matter of hours. The individual perpetrating the fraud  
 25 additionally gained access to Plaintiff’s sensitive private information, such as Plaintiff’s email  
 26 address account and phone number, and thereby was able to steal Plaintiff’s online identity in  
 27 its entirety. Plaintiff alleges the rogue fraudster was able to carry out this attack due to a lack  
 28 of proper verification measures taken by BOOST.

1           Boost's Summary

2           Boost had proper policies and procedures in place in May 2021 to protect the security of  
3 its customers' accounts, and Boost's records reflect that it followed those policies and  
4 procedures with respect to Plaintiff's account. Boost is not responsible for the alleged actions  
5 of a third party fraudster. Boost denies the material allegations of Plaintiff's Complaint and  
6 denies that Plaintiff is entitled to the relief he seeks. Boost filed a motion to compel arbitration  
7 on March 4, 2022, citing to the binding arbitration clause present in the consumer contract  
8 entered into by Plaintiff and Boost. The motion remains under submission.

9           **3. LEGAL ISSUES**

10          Whether Boost's terms of service are enforceable; particularly, its arbitration and  
11 damages limitations clauses.

12          **4. MOTIONS**

13          On March 4, 2022, Boost filed a motion to compel arbitration, which is currently  
14 pending. If the Court denies its motion to compel arbitration, Boost reserves its right to file a  
15 *forum non conveniens* motion, a motion for summary judgment, and any other motion that may  
16 be appropriate.

17          **5. AMENDMENT OF PLEADINGS**

18          At this time, Plaintiff does not anticipate any amendments of any pleadings. If the  
19 Court denies Boost's motion to compel arbitration, Boost requests that the Court set a deadline  
20 for amendment of the pleadings not more than 30 days after the Court's ruling on the motion to  
21 compel arbitration.

22          **6. EVIDENCE PRESERVATION**

23          Counsel for both parties have reviewed the guidelines relating to the Discovery of  
24 Electronically Stored Information ("ESI Guidelines") and have met and conferred pursuant to  
25 Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence  
26 relevant to the issues reasonably evident in this action.

**7. DISCLOSURES**

The parties have agreed that if Boost's motion to compel arbitration is denied, the parties will exchange initial disclosures two weeks after the Court issues its order.

**8. DISCOVERY**

No discovery has been conducted to date, as Boost's motion to compel arbitration is still pending. In the event Boost's motion is denied, the parties will meet and confer regarding a discovery plan and schedule two weeks after they exchange initial disclosures. In the event that the Court denies Boost's motion to compel arbitration in advance of the May 26, 2022 case management conference, the parties will endeavor to file an updated case management conference statement before the May 26, 2022 case management conference.

**9. CLASS ACTIONS**

N/A

**10. RELATED CASES**

N/A

**11. RELIEF**

Plaintiff seeks damages of approximately \$180,000, the approximate fair market value of 3.17 Bitcoin at the time this action was filed. Given Bitcoin is a cryptocurrency which is inherently and constantly influx and particularly volatile, a dispute will likely exist as to what date/time should be used as a reference for calculating the value of plaintiff's stolen assets (e.g., the value of the assets at the time of the theft vs. some other point in time). Boost denies that Plaintiff is entitled to the damages he seeks.

**12. SETTLEMENT AND ADR**

Plaintiff has reached a confidential settlement agreement with Coinbase, Inc.

Boost believes it is premature to discuss resolution prior to the Court's ruling on Boost's motion to compel arbitration.

If the Court denies Boost's motion to compel arbitration, the parties will meet and confer and discuss ADR LR 3-5 at the same time they discuss a proposed discovery plan.

1       **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2           Boost did not consent to have a Magistrate Judge conduct all further proceedings  
3 including trial and entry of judgement. *See* Doc. No. 8.

4       **14. OTHER REFERENCES**

5           N/A

6       **15. NARROWING OF ISSUES**

7           The parties are unable to discuss narrowing issues by agreement or motion while  
8 Boost's motion to compel arbitration is pending.

9       **16. EXPEDITED TRIAL PROCEDURE**

10          The parties agree this case is not appropriate for the Expedited Trial Procedure of  
11 General Order No. 64 Attachment A.

12       **17. SCHEDULING**

13          Boost believes it is premature to set dates for designation of experts, discovery cutoff,  
14 hearing of dispositive motions, pretrial conference, and trial, as its motion to compel arbitration  
15 is still pending.

16       **18. TRIAL**

17          Plaintiff requests a jury trial and estimates the length of trial would be approximately 5  
18 days. Boost believes it is premature to estimate the length of trial as its motion to compel  
19 arbitration is still pending.

20       **19. DISCLOSURE OF NON-PARTY INTERESTED PARTIES OR PERSONS**

21          Both parties have filed the Certification of Interested Entities or Persons pursuant to  
22 Civil Local Rule 3-16.

23          Plaintiff has no such interest to report other than the named parties. *See* Doc. 22.

24          DISH Wireless L.L.C. is a wholly owned subsidiary of DISH Wireless Holding LLC,  
25 which is a wholly owned subsidiary of DISH Network Corporation. DISH Network  
26 Corporation has no parent corporation and, based solely on a review of Form 13D and Form  
27 13G filings with the Securities and Exchange Commission, no entity owns more than 10% of  
28 DISH Network Corporation's stock other than Dodge & Cox.

1       **20. PROFESSIONAL CONDUCT**

2           Counsel for both parties have reviewed the Guidelines for Professional Conduct for the  
3 Northern District of California.

4       **21. OTHER MATTERS**

5           None.

6       Dated: May 19, 2022

Respectfully submitted,

7           THE ROBIN HOOD LAWYERS, LLP

8           By: /s/ Alex Farzan

Alex Farzan

9           Attorney for Plaintiff

10          PHILIP MICHNO

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12       Dated: May 19, 2022

Respectfully submitted,

13           COBLENTZ PATCH DUFFY & BASS LLP

14           By: /s/ Clifford E. Yin

15           Clifford E. Yin

16           Attorneys for Defendant

17           DISH WIRELESS L.L.C., d/b/a BOOST  
18           MOBILE